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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 BILLY WAYNE MILLER,

12 Plaintiff,

13 vs.

14 OCEANSIDE POLICE DEPARTMENT and
15 DRUG ENFORCEMENT AGENCY,

16 Defendants.
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CASE NO. 09 CV 2265 JM (BLM)

**ORDER GRANTING MOTION TO
VOLUNTARILY DISMISS
DEFENDANT DRUG
ENFORCEMENT AGENCY;
DENYING MOTION TO DISMISS
AS MOOT**


Doc. Nos. 31, 37

19 Pending before the court is Plaintiff's "Motion to Dismiss Plaintiff's Complaint to Set Aside
20 Forfeiture." (Doc. No. 37). The court construes this as a notice of voluntary dismissal pursuant to
21 Federal Rule of Civil Procedure 41(a). A plaintiff "may dismiss an action without a court order by
22 filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for
23 summary judgment." Fed. R. Civ. P. 41(a)(1)(A). As Defendant Drug Enforcement Agency has filed
24 neither an answer nor a motion for summary judgment, Plaintiff may dismiss the action without
25 prejudice against them as a matter of course. *See* Fed. R. Civ. P. 41(a)(1)(B).
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1 The court hereby orders that Defendant Drug Enforcement Agency be DISMISSED from the
2 action. Accordingly, Defendant Drug Enforcement Agency's motion to dismiss (Doc. No. 31) is
3 DENIED as moot.

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5 **IT IS SO ORDERED.**

6 DATED: December 9, 2009

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8 Hon. Jeffrey T. Miller
United States District Judge